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SENSITIVE

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COMMERCE FOR BIS (GOLDMAN)  
NSC FOR CHUPA  
WINPAC FOR LIEPMAN

E.O. 12958: N/A

TAGS: [PARM](#) [PREL](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC) - WRAP-UP FOR  
WEEK ENDING FEBRUARY 6

This is CWC-20-04.

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TOWARDS AFRICAN UNIVERSALITY  
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1. (U) Nilkanthsing Jagarnath (External Relations Division) advised Del on February 6 that Chad is about to ratify the CWC. He was also optimistic that Libya's accession would soon bring on board Sierra Leone and Djibouti -- saying that Tripoli has bought a measure of influence with them. Nil added that the TS is considering organizing a working lunch for African States Not Party in Brussels sometime in the coming weeks, and invited Del to participate.

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COLD COMFORT IN CTBTO JUDGMENT  
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2. (U) OPCW Legal Counsel Jonathan Kusi is reportedly encouraged by the February 4 judgment of the ILO Administrative Tribunal on a tenure case at the CTBTO (Judgment 2315, re Vorobiev). While cases brought against the CTBTO and the OPCW differ in significant ways, WEOG coordinator Ruth Flint told us that Kusi found three elements of the CTBTO decision that should bolster the OPCW's own legal position against the complaints of former staff members. A layman's understanding of the these points is as follows:

-- The ILO/AT did not find that the CTBTO acted retroactively in deciding not to renew the contract of the complainant. This precedent should be helpful for the OPCW.

-- The ILO/AT did not challenge the tenure policy of the CTBTO, but rather its implementation, in failing to cite the reason for not renewing the complainant's contract. However, the OPCW did cite the implementation of tenure policy as the reason for not renewing some staff members' contracts.

-- The ILO/AT found that the CTBTO did not follow due process in failing to provide a copy of the recommendation of the Personnel Advisory Panel to the complainant. Kusi believes that the OPCW process was more transparent and did follow due process in that regard.

3. (SBU) Comment: While we defer to Kusi's legal judgment, we are not sure that the OPCW will fare better than the CTBTO in future judgments by the ILO/AT. While the Tribunal did not challenge the CTBTO tenure policy itself, it did challenge a technical legal issue regarding its implementation. We expect that the ILO may well find other lapses of implementation by the OPCW management. Moreover, the ILO/AT noted that the CTBTO had extended the complainant's contract while the case was being decided, and so did not award moral damages to the former staff member. As the OPCW has not extended contracts pending Tribunal decisions, it seems more likely that it could be found liable for moral damages. End Comment.

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BUSTANI REQUESTS EXTENSION  
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4. (U) Former DG Bustani has reportedly requested an extension until March 5 to respond to the OPCW's request for review of the ILO/AT decision calling for payment of damages to Bustani.

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OPTIMIZATION OF CWDF VERIFICATION  
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5. (U) In a brief meeting, TDYer Chris Park discussed the ongoing U.S.-TS "optimization" effort with Policy and Review Branch chief Per Runn. Runn flagged several points:

-- He had recently e-mailed to Washington a brief document summarizing the outcome of the December optimization consultations. He requested reactions from the U.S. -- particularly if we substantively disagreed with his summary -- within the next two weeks. This is important because the TS plans to use this summary as a briefing document to help

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prepare DG Pfirter for his visit to U.S. CWDF sites in early March, and would like to ensure that it fairly reflects the discussions that were held.

-- The TS has yet to hear from the U.S. on dates for the first proposed "case study" site visit to a CWDF. Park indicated that to his knowledge there were no specific dates yet, but that April was the most likely timeframe. Except for dates near Easter (roughly, April 8 through 11), Runn believed April was feasible. (Note: in practical terms, this would rule out the week of April 4-10, and would mean that TS personnel would be unable to depart from The Hague earlier than Monday, April 12, if the site visit were scheduled for the following week.)

-- The TS felt obligated to provide a status report on their optimization work to the Scientific Advisory Board (SAB) at its meeting in late August. Although Runn intended to avoid any discussion of the bilateral work with the U.S. or go into extensive detail, he anticipated that the TS paper that was one of the two bases for bilateral discussions in December, as well as the summary of those consultations mentioned above, would serve as the basis for the SAB presentation.

-- The TS is also seriously considering a UK suggestion that they present a briefing on optimization at an upcoming CW demil conference in St. Petersburg. Such a briefing, he stressed, would be at a very abstract level, focusing on general principles and approach, and would not touch directly on the bilateral work with the U.S. Park noted that there might be mixed reactions in Washington to this idea, and that it would be extremely important that the TS not use such a presentation to go into details or to do anything that would be read as an effort to bring political pressure to bear on the U.S. on optimization.

-- Finally, Runn noted that the TS would be preparing a paper on optimization for the next EC session. Again, he envisioned a general, top-level document that would avoid details, but would be more focused than the reports previously produced on this topic. He plans to provide advance drafts to all possessor states for review and comment prior to publication.

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NEW HEAD OF BFB SELECTED  
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16. (SBU) Admin Director Herb Schulz informed TDY'er Park that DG Pfirter has recently selected a highly qualified Australian national for the P-5 Head of Budget and Finance position. The external consulting firm used to evaluate candidates for key posts had rated him very highly, and he was number two on the short list. The 35-year old Australian is currently Comptroller for the state of Queensland. In view of the fact that the top choice for the job (a Japanese candidate) withdrew at the last minute, the DG has informed Ambassador Javits that he will not announce the decision of the new head of BFB "until he signs the contract."

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UK AND GERMAN DELEGATIONS ON MANAGEMENT ISSUES  
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17. (SBU) German and UK representatives (Beerwerth and Matthews) discussed some of their governments' current OPCW management-related concerns with TDYer Park, expanding on points earlier shared with USDEL. Although both see OPCW management as having improved, there are a number of administrative issues that have been raised with TS management over the past year where they have seen no evident progress. Beerwerth and Matthews believed that interested delegations should press for resolution of these issues early in 2004. Matthews suggested that a joint approach to DDG Brian Hawtin might be the best way to proceed, following up with Ambassador/DG level discussion only if this proved unsatisfactory. There was agreement that some care needed to be taken to a) include issues that did not have any impact on OPCW staff, and b) take up issues that did affect the staff in a phased or prioritized manner, to avoid creating an impression that the major contributors are "stalking the staff." Issues touched on included:

-- Death and Disability insurance: Beerwerth expanded on Berlin's concerns, explaining that in the UN, in addition to the basic survivor/disability benefits of the pension plan, which he argued are essentially covered by the lump-sum

payout of the provident fund, the UN Joint Staff Pension Fund has a provision for optional, supplemental death and disability insurance. Such insurance is available at discounted rates through the UNJSPF, but any costs are borne entirely by participating staff. In Berlin's view, the TS claims that they are simply providing a benefit analogous to that found in the UN Common System are flatly inaccurate. (N.B.: Beerwerth committed to providing the U.S. with the relevant UNJSPF documentation to document this point). Berlin also has strong concerns of principle with the fact that TS management established and provided this benefit without any formal basis or approval of the governing bodies. The UK shares many of these concerns, but is acutely conscious of the risk that this may be construed as an "acquired right," in which case the benefit may have to continue to be provided to existing staff, although it could be withdrawn for future hires.

-- Home leave lump-sum payment: Currently the OPCW follows the widespread practice of allowing staff to make their own arrangements for home leave travel, and paying them a lump sum calculated at 75 percent of the full-fare economy rate for such travel. Research conducted by the Director of Verification and confirmed by the Office of Internal Oversight has reportedly confirmed that, given modern fare structures, this is no longer cost-effective, and the OPCW could save a substantial amount (a few hundred thousand euros annually) by simply providing tickets directly through its travel office. Resistance to changing the current practice is widespread within the TS, however, since staff have become accustomed to reaping this substantial windfall. Beerwerth and Matthews were convinced that the current practice should be changed and that doing so was within the power of the DG, but that he would not act without pressure from member states.

-- Accrued Annual leave: Germany in particular has repeatedly expressed concern over the high amounts of unused annual leave accrued by staff members (up to six weeks' worth can be rolled over from year to year and, ultimately, cashed out on separation). The concern is that, with a maximum tenure of seven years, the current policy substantially increases the costs of turnover. Previously, Germany has exhorted the DG and senior management to manage this issue better -- in effect, to make sure staff use their annual leave rather than accrue it -- but they now appear to be considering a formal change to the amount of leave that can be rolled over. Beerwerth noted that this would require amendment of the Staff Rules. While such amendments are supposed to be formally approved by States Parties, the Rules have never been fully approved and are being implemented "provisionally." If the DG were to propose an amendment on this point, it too could be implemented provisionally pending approval.

-- Exchange Rate mechanism: Discussion also touched on OPCW's exchange-rate exposure and rules for dealing with it (something on the order of 15 percent of OPCW's budget is sensitive to the dollar/euro exchange rate). Beerwerth strongly supported following the ABAF recommendation to a) use a 12-month average exchange rate to develop the budget, and b) update this estimate with a newer 12-month average shortly before adoption of the budget by the Conference of the States Parties. Park noted that while this might be more accurate than the practice used in the 2004 budget (where rates were never updated), it could result in increased costs for member states, and might still leave the Organization exposed to fluctuations. He briefly outlined approaches that have been used by other organizations to deal with this problem, including split currency assessments and forward purchasing of currency. German and UK reps agreed that this was an important issue that required further attention.

#### ----- SWISS ELECTRONIC DECLARATION DATABASE TOOL -----

18. (U) Swiss experts provided TDY'er Park with an updated version (1.1) of their MS Access declaration tool (hand-carried to AC/CB). The Swiss repeated their invitation of last year for U.S. comments on their project, which they envision making available to other member states as an easy way to develop and maintain declaration data.

#### ----- CHALLENGE INSPECTION EXERCISE -----

19. (U) Ruth Flint (Switzerland) announced at the Feb. 3 WEOG that the challenge inspection exercise to be hosted by the Swiss had to be postponed for administrative reasons to the autumn.

#### ----- ILO COMPLAINTS -----

110. (U) Flint also announced that the DG had informed some delegations that six TS staff members have filed ILO complaints in connection with their dismissal under the tenure policy.

111. (U) Javits sends.  
SOBEL